



Level 5, 1 Macarthur Street
EAST MELBOURNE VIC 3000

03 7005 9772

contact@betterreg.vic.gov.au
betterregulation.vic.gov.au

Mr Samuel Porter
Deputy Secretary, Justice Policy and Data Reform
Department of Justice and Community Safety
Level 24, 121 Exhibition St
MELBOURNE VIC 3000

5 November 2021

Dear Mr Porter

**REGULATORY IMPACT STATEMENT FOR GUARDIANSHIP AND ADMINISTRATION
(FEES) REGULATIONS 2022**

I would like to thank staff at the Department of Justice and Community Safety (the Department) for working with our team on the preparation of the Regulatory Impact Statement (RIS) for the Guardianship and Administration (Fees) Regulations 2022 (the proposed Regulations).

As you know, under section 10 of the *Subordinate Legislation Act 1994* (the SLA), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is appropriate to the proposal's expected effects. The RIS also needs to be clearly written, so it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 28 September 2021 meets the adequacy requirements of the SLA.

Background

The *Guardianship and Administration Act 2019* (the GAA) provides the legal framework to protect the rights of adults whose decision-making capacity is impaired, setting out the arrangements that govern guardianship and administration orders. The Victorian Civil and Administrative Tribunal (VCAT) makes guardianship and administration orders under the GAA in its Guardianship List.

A guardianship order appoints a substitute decision maker (a guardian) to manage lifestyle and personal matters for an adult who is unable to make these decisions for themselves. Guardianship orders cover matters including health care and accommodation arrangements.

An administration order appoints a substitute decision maker (an administrator) to manage the financial and legal affairs of an adult who is unable to make decisions for themselves. It is common for adults represented by an administration order to also be represented by a guardianship order.

There are also supported administration and supported guardianship orders for adults who require some assistance to make decisions (from a supported administrator or guardian) but retain the right to make decisions for themselves.

These orders are different to a power of attorney, which is a legal document under which an adult appoints a substitute decision maker (an attorney) to make decisions on their behalf if and when they are unable to make decisions for themselves.

The proposed Regulations will support the GAA by prescribing the annual fee charged by VCAT on the estate of a person subject to an administration order and will replace the current VCAT fee arrangements (due to expire on 28 February 2022).

Under the GAA, VCAT can set annual fees for administrative orders but cannot charge fees for guardianship, supported administration or supported guardianship orders. Therefore, the RIS only considers the appropriate level and structure of the annual fee for administration orders.

Analysis of options

The Department analyses four fee options for administration orders in the RIS:

- Option 1: no regulations and no fees (the base case), which would occur if current fee arrangements were allowed to expire and were not replaced;
- Option 2: the current arrangement, where fees are set at 9 fee units (\$135.30 in 2021-22) with no fees payable where income is below a threshold set at the poverty line;
- Option 3: fees set at 9 fee units (\$135.30 in 2021-22) with no fees payable where income is below a threshold set at 30 per cent above the poverty line to reflect the additional cost of having a disability; and
- Option 4: full cost recovery of administration orders. Fees would be set at 18 fee units (\$270.55 in 2021-22) to cover the full costs of administration orders (\$3.376 million).

The Department assesses these options against four key criteria:

- *Equity* (35 per cent weighting) — the financial impact on represented individuals and their capacity to pay;
- *Efficiency* (35 per cent weighting) — the impact on VCAT's capability to provide services to the community;
- *Simplicity* (15 per cent weighting) — simplicity for administrators to understand and arrange for payment and for VCAT to administer the fee; and
- *Balance of public and private contribution* (15 per cent weighting) — how each fee option matches contributions to costs against the public and private benefits of administration orders.

The Department explains in the RIS that Option 2 is its preferred option. This option continues current fee arrangements with an increased threshold to reflect the current poverty line (\$929.76 a fortnight). The Department assesses the impacts of Option 2 against the criteria as follows:

- *Equity* — fees will not increase under Option 2 and estates below the poverty line will not have to pay fees, thereby supporting people facing financial difficulties. However, under this option, some estates will be required to pay fees (unlike Option 1) and this option does not consider the cost burden of disability in setting the threshold (unlike Option 3);
- *Efficiency* — Option 2 maintains the current revenue base for the Guardianship List. The Department explains that this will enable VCAT to continue to provide high quality, timely and cost-effective services. Only Option 4 (full cost recovery) will raise more revenue;
- *Simplicity* — while Option 2 is not as simple as Option 1 (no fees) and Option 3 (as it has a higher threshold, meaning more automatic fee waivers), it is the same as the current fee structure, making it easy to administer and understand; and
- *Balance of public and private contribution* — Option 2 best balances public and private contributions to fund the Guardianship List (a roughly even split), reflecting the public and private benefits of administration orders.

Implementation and Evaluation

In the RIS, the Department explains that the proposed Regulations are intended to commence in February 2022 when the current fee arrangements expire. It will write to relevant stakeholders to advise them of commencement. The Department states that implementation will be straightforward as it involves updating existing fees.

DJCS states that a review of the proposed regulations will be incorporated into the mid-term evaluation of VCAT fees which the Department committed to do when the Victorian Civil and Administrative Tribunal (Fees) Regulations 2016 were made. This review has been delayed due to the COVID-19 pandemic. The review will evaluate the

proposed regulations against the criteria in the RIS for the Victorian Civil and Administrative Tribunal (Fees) Regulations 2016, utilising updated information and data obtained from VCAT.

Yours sincerely



Anna Cronin

Commissioner for Better Regulation